REMARKS

Favorable consideration of the subject application, in light of the following remarks, are respectfully requested.

Applicants hereby elect, with traverse, the groups of invention identified by the Examiner as Groups 20-38, claims 17-25, 28, 29, 45, and 47, "drawn to a nucleic acid encoding a fusion protein comprising two different cytokines, a vector, a host cell and a method for producing the fusion protein." OFFICE ACTION at 2.

The Examiner has further required that Applicants elect one SEQ ID NO selected from SEQ ID NOS: 1-19. OFFICE ACTION at 5. Thus, Applicants elect, with traverse, the amino acid sequence of SEQ ID NO: 1.

The Examiner has properly noted that the present application was filed under 35 U.S.C. § 371 as a national stage of PCT/EP2004/008114 and, therefore, PCT rules for lack of unity apply. *See* OFFICE ACTION at 2. However, in explaining the basis for the various requirements, the Examiner utilizes the "patentably distinct" standard. OFFICE ACTION at 6. This standard is inapplicable to the PCT unity of invention standards.

Moreover, there are two criteria for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct; and (2) there must be a serious burden on the Examiner if restriction is not required. M.P.E.P. § 803.01. Hence, a restriction between patentably distinct inventions is proper only where there is a serious burden on the examiner to examine all the claims in a single application. This is true even when appropriate reasons exist for a restriction requirement. While applicant does not concede that proper reasons exist for a restriction requirement (*i.e.*, whether two independent and distinct inventions are claimed), there is no

serious burden on the Examiner to examine all of the claims in the present application particularly since the searches are co-extensive. In the present application there is no serious burden on the Examiner to examine, at a minimum, groups 20-38 along with groups 39-57 and groups 96-362.

As discussed above, groups 20-38 are directed to a fusion-encoding nucleic acid molecule, vector, and host cell comprising said nucleic acid molecule. Groups 39-57, on the other hand, are directed to an infectious viral particle and a process for producing said infectious viral particle. However, the infectious viral particle of groups 39-57 explicitly contains the fusion-encoding nucleic acid molecule or vector of groups 20-38. Thus, the search required for groups 39-57 necessarily overlaps that of groups 20-38. Accordingly, there is no serious burden for the Examiner to examine all of the claims of group 20-38 and of group 39-57.

Similarly, the methods of groups 96-115, 116-134, 135-153, 154-172, 173-191 and 192-210 drawn to a method of preventing or treating a cancer as well as methods of groups 249-267, 268-286, 287-305, 306-324, 325-343 and 344-362 drawn to a method of preventing or treating an infectious disease utilize the same nucleic acid molecule or vector of groups 20-38 or infectious viral particle of groups 39-57. Accordingly, the search required for all these twelve different groups overlaps that of groups 20-38 and 39-57 and, thus, does not constitute undue burden for the Examiner to examine all the claims in a single application.

In conclusion, applicants believe that the present restriction, or lack of unity, requirements are improper and should be withdrawn or be at least modified such that viral particle and method of treatment claims are examined with the elected groups of invention.

This response is made without prejudice or disclaimer to any non-elected subject matter. As noted by the Examiner, rejoinder of the non-elected process claims would be appropriate upon an indication of allowable subject matter with regard to the elected product claims. Applicants reserve the right to seek such rejoinder. Applicants also reserve the right to file one or more continuation and/or divisional applications directed to any non-elected subject matter.

Applicants note the Examiner's citation of EP 0158198. *See* Form PTO-892 attached to Office Action. Should the Examiner issue a rejection of the pending claims of the present application over this reference, Applicants will address such reference at that time.

In view of the foregoing, further favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions related to this Response, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney at the below-listed telephone number concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: November 6, 2008

By: _____
Susan M. Dadio
Registration No. 40373

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620